IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 93 of 1988

with

CROSS OBJECTION NO 6 OF 2004

IN

FIRST APPEAL NO. 93 OF 1988

with

FIRST APPEAL No 94 of 1988

Date of Decision: 14.10.2004

GUJ STATE ROAD TRANSPORT CORPN

Versus

GITABEN HARILAL

(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

Appearance:

Ms. Mayaben Desai for MR MITESH D PANDYA GSRTC

MR SUNIL B PARIKH for Claimants.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

This Judgment disposes of two appeals and cross objections in First Appeal No. 93 of 1988. They are arising out of the same accident and common award.

Whether reporters of Local Papers may be allowed to see the Judgment?

Shortly stated, the accident took place in the morning of 20.11.81 when Harilal Gagubhai Parmar (deceased) was taking his horse carriage (tonga) after delivering the milk at Dhrol at Itala. The occupants in the Tonga were Harilal (deceased), his son, Thakarshi Raghavji (claimant) and Dharamshi Lalaji. Tonga was being driven on the left side of the road. However, when it reached near the Government Hospital at Dhrol, State Transport Bus bearing Registration No. GRT 6697 came from the opposite direction. It was being driven rashly and negligently by its driver who lost control of it and dashed against the horse carriage. As a result of this accident, horse carriage was thrown away alongwith the occupants. They fell in a ditch nearby. Consequently, they sustained serious injuries. They were shifted to Government Hospital, Dhrol, thereafter to Irwin Group of Hospitals, Jamnagar. Haribhai Gagubhai died. Other two occupants were seriously injured and admitted as indoor patients, horse also died. Through Claim Petition No. 69 of 1982, Gitaben Harilal (wife of the deceased Harilal) and other dependents claimed compensation of Rs.2,70,000.00 for the death of the deceased who happened to be the sole bread earner of the family. In Claim Petition No. 74 of 1982, Thakarshi Raghavji claimed compensation of Rs.50,000.00 for personal injuries. Claimants submit that the accident took place due to rash and negligent driving of bus by its driver, therefore, driver and the State Road Transport Corporation are liable to pay compensation to them. Deceased was carrying passengers and milk from villages to the town. His income was Rs.85/- to Rs.90/per day, out of which, he used to spent Rs.20.00 on the horse and Rs.10.00 by way of salary for a boy engaged by him. Consequently, his net earning was Rs.55.00 per day.

The respondents resisted the claim petitions. Allegations have not been admitted nor income of the deceased. On the pleadings of the parties, issues were framed. After the parties led evidence, the claims tribunal came to the conclusion that the accident took

place as alleged, therefore, the accident took place as a result of rash and negligent driving of the bus by its driver causing death of Harilal Gagubhai and injury to Thakarshi Raghavji on various parts of the body described in the award. Consequently, compensation of Rs.1,32,000.00 has been awarded in Claim Petition No. 69 of 1982 and Rs.15,000.00 in Claim Petition NO. 74 of 1982 carrying, in both the cases, interest at the rate of 9 % p.a. from the date of the application till realization.

The appellant is not satisfied with the award, therefore, same has been challenged through these appeals. Claimants in Claim Petition No. 69 of 1982 have preferred cross objection No. 6 of 2004 seeking enhanced compensation.

Heard learned Counsel for the parties. Perused the record. Ms. Mayaben Desai submits that the Claims Tribunal has not considered the evidence properly as a result, proper compensation has not been awarded. Therefore, it is submitted that the award, particularly in First Appeal No. 93 of 1988 be set aside. On the other hand, Shri Parikh submits that just compensation has not been awarded by the Claims Tribunal in Claim Petition No. 69 of 1982. Deceased Haribhai Gagubhai was the sole bread earner of the family which was surviving on the income of the Tonga being plied by the deceased. Family consisted of seven members. Deceased used to cover some villages to bring milk to the town every day and carry passengers. He has been working hard for survival of the family. He could earn Rs.85.00 to Rs.90.00 per day out of which he was spending Rs.20.00 on the horse and Rs.10.00 by way of salary to the boy he had engaged to help him. Bus dashed against the Tonga with such great force that horse, Tonga and occupants fell in ditch. Deceased died in the hospital, horse died and other occupants also sustained injuries. Claim Tribunal has not considered the evidence properly nor calculated the compensation in a proper manner. In the other case, learned counsel for the appellant submits that wrong compensation has been awarded towards pain, mental shock and suffering etc.

Giving consideration to the whole matter, we hold that the accident took place due to rash and negligent driving of the bus by its driver, otherwise, accident could be avoided. Consequently, findings of the claims tribunal are clearly sustainable looking to the evidence in case. With regard to the compensation, income of the deceased is taken at Rs.55.00 per day, Rs.1650.00 monthly

and Rs.19800.00 yearly, multiplied by 17 since the deceased was 35 year old at the time of accident. In this way, compensation works out to Rs.3,36,600.00. Making deduction of 1/3rd towards personal expenditure, compensation comes to Rs.2,24,400.00. Rs.5000.00 (Consortium), Rs.5000.00 (Loss of Life Expectancy), Rs.5000.00 (Funeral Expenses) and Rs.3000.00 towards medical and transport expenses. This way, total compensation works out to Rs.2,42,400.00. Therefore, First Appeal No. 93 of 1988 is dismissed. Cross Objections No. 6 of 2004 are allowed. Compensation is enhanced to Rs.2,42,400.00 (Rs.two lacs forty two thousand four hundred only). Enhanced compensation will carry interest at the rate of 6 per cent p.a. from the date of the application till the date of deposit. It shall be deposited by the Corporation with interest within two months from today before the Claims Tribunal concerned, thereafter, released in favour of the claimants concerned by way of an account payee cheque after proper verification.

In First Appeal No. 94 of 1988, there are no Cross Objections, otherwise, we find no merits in this appeal and the same is dismissed. In the three matters, the parties will bear their own costs.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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